

Mandatory Arbitration Program Guide

*ar·bi·tra·tion n. 1.
the process by which
the parties to a
dispute submit their
differences to the
judgment of an
impartial party
appointed by
statutory provision*



Introduction

Many disputes between consumers and contractors can be resolved efficiently and satisfactorily through arbitration. Mandatory arbitration is a process in which an impartial third person is appointed by the Contractors State License Board (CSLB) or its representative to make a final decision in a dispute between two or more parties. Because of the many advantages arbitration can offer, the CSLB offers arbitration for the resolution of disputes that meet certain criteria. The CSLB will pay for the hearing, the arbitrator, and the services of one state-appointed expert witness per complaint. Only contractors with good records will qualify for participation in arbitration. Complaints involving deceptive or fraudulent practices will continue to be investigated by the CSLB.

Criteria



A case qualifies for mandatory arbitration under Business and Professions Code Section 7085 et seq., as amended by Statutes of 1998, Chapter 492 if:

- (1) the dispute involves present or future damages of \$5,000 or less;
- (2) the contractor possesses a license that is in good standing;
- (3) the contractor does not have a record of prior violations;
- (4) the contractor does not currently have a disciplinary action pending against him or her; and
- (5) the parties have not previously agreed to private arbitration of the dispute, either in their contract or otherwise.

The complaint must be filed within four or ten years after the alleged wrongful act or omission causing the dispute occurred, or within the duration of any written warranty for which breach is alleged. The four year time period applies to disputes involving **patent** defects and the ten year time period applies to disputes involving **latent** structural defects (Business and Professions Code Section 7091).

Mandatory and binding arbitration

“Mandatory” and “binding” are key terms to understand before entering into arbitration. Participation in this program is mandatory if a complainant wishes to have his or her complaint resolved by the CSLB. If the complainant (the person filing the complaint against a contractor) chooses not to participate in arbitration, the complaint will be closed and no further action will be taken by the board. If the complainant chooses to participate in arbitration, the contractor will be obligated to participate. If the respondent contractor (the contractor against whom the complaint is filed by the complainant) refuses to participate in arbitration and the complainant obtains an award against the contractor, the award will be enforced as if the respondent had been present at all of the proceedings.

Arbitration in this program is **binding**. This means that both the consumer and contractor whose dispute is resolved by an independent third person (the arbitrator) must comply with the decision of that third person. In binding arbitration, parties who refuse to comply with the arbitrator’s award may be taken to court and have a judgment entered against them. In addition, licensed contractors who fail to comply with an award that is issued against them may have their licenses suspended or revoked.

This brochure provides the information necessary to understand the CSLB arbitration program for the resolution of complaints in which the damage is \$5,000 or less.

The CSLB Arbitration Program

An arbitration association has been selected to administer construction disputes involving arbitration through the CSLB. The arbitration association has expert arbitrators throughout California who have been trained to resolve consumer/contractor disputes. All have undergone intensive training to ensure that both parties receive a fair hearing. The arbitration association will contact you after the CSLB asks that your dispute be scheduled for a hearing. The arbitration association will select a CSLB-approved arbitrator to conduct the hearing.

Arbitration at work



Parties to a construction contract should consider arbitration when communications have broken down, when the consumer has filed a complaint with the CSLB, and the board has determined that the dispute could be effectively handled through arbitration.

Once a representative of the board determines that a complaint involving damages (financial injury) of \$5,000 or less qualifies for arbitration, a Notice to Arbitrate form will be sent to the consumer and the contractor. This form, indicating the names and addresses of the respective parties, will outline the claims and relief sought by each party. This form will advise both parties of the consequences of failing to participate in arbitration. If the complainant does not return a completed and properly executed (signed and dated) Notice to Arbitrate form to the CSLB within 30 calendar days of the board's mailing date, the complaint will be closed and no further action will be taken by the board.

If the respondent (the contractor) does not return a properly executed Notice to Arbitrate form within 30 calendar days and the complainant does, the complaint will be resolved through arbitration and any award rendered against the licensed contractor will be enforced as if both parties had been present at all of the proceedings.

The CSLB will send copies of the signed Notice to Arbitrate form to the other party so that both of them will know exactly what issues are in dispute and what remedies are being sought. Both can then prepare their cases for presentation at the arbitration hearing. A copy of the signed Notice to Arbitrate form will also be sent to the arbitration association selected to handle your case.

Scheduling the hearing

When the arbitration association receives a signed Notice to Arbitrate form, it will select an arbitrator to conduct the hearing. The arbitration association will then set a hearing date, time, and place, and they will notify the parties in writing of the scheduled hearing.

Case preparation

Each party will be responsible for his or her own case presentation at the hearing. Parties may hire an attorney to represent them or they may present their own cases. In either instance, case preparation is very important. Both parties should review the Notice to Arbitrate form for an understanding of all the issues and as preparation for gathering relevant evidence (see page 7).

Expert witnesses

The CSLB will pay for one state-appointed expert witness per case.

An expert witness is a person who has extensive work experience and is competent to evaluate the work that is in dispute. If an expert witness is needed, the CSLB will hire one prior to referring the dispute to arbitration. This expert will become the state-appointed expert for the dispute.

When a state-appointed expert is used, both parties will receive a copy of the report of the expert witness shortly after the dispute is referred to the arbitration association. Either party may use the expert witness at the arbitration hearing. A party who wishes to use the testimony of the state-appointed expert at the hearing will be responsible for making arrangements with the witness to ensure his or her attendance at the hearing. **Arrangements to have a state-appointed expert testify should be made with the expert at least 15 days prior to the scheduled hearing.**

The consumer or the contractor may use an expert who is not appointed by the state.

A party who uses the services of an expert witness who is not appointed by the state will be responsible for arranging and paying for the services of that expert witness.

To locate an expert who is not appointed by the state, consult local sources, references, trade associations, building exchanges, or the yellow pages of the telephone book. The local office of the CSLB can also provide you with a list of expert witnesses who you can hire to assist in your dispute.

The hearing

Arbitration hearings are conducted in an informal setting and are designed to bring out the facts involved in a case.

The consumer presents his or her claims, evidence, and witnesses first, and the contractor follows with his or her claims, evidence, and witnesses. Parties may be represented by legal counsel if they wish, but at their own expense. The rules that govern arbitration hearings under this program are found in Business and Professions Code section 7085.5.

When a hearing is completed, the arbitrator has 30 calendar days in which to render a decision. The arbitrator has the authority to rule on the claims asserted and to award money damages (see page 7).

The award

The arbitrator's award is final and binding on both parties. In other words, the contractor and the consumer must abide by the terms of an award. If either party does not comply, the other may petition the court to have the award confirmed and made a judgment of the court. The court can then enforce the award as its civil judgment.

NOTICE:

Civil Code Section 2855 states, "An arbitration award rendered against a principal alone shall not be, be deemed to be, or be utilized as, an award against his surety." The fact that a consumer receives a favorable award through the CSLB arbitration program does not mean that a surety company must pay the consumer from the proceeds of a contractor's license bond.

The procedure for enforcing awards can be found in the Code of Civil Procedure starting with section 1285. However, if court enforcement is necessary, an attorney should be consulted.

Consumers or contractors who wish to appeal an award in court, must do so at their own expense. A consumer or contractor's refusal to accept the terms of an award will not preclude the CSLB from taking action after an award is granted.

The CSLB has the authority to discipline contractors who do not comply with an arbitration award. Most awards will specify a final date for compliance. If the award is against the contractor and the contractor does not comply within the time specified in the award, the consumer should notify the CSLB's regional office. The board will investigate the report of noncompliance, and, if appropriate, the board may suspend the contractor's license. If the contractor complies with the arbitrator's award within one year, his or her license may be reinstated; otherwise, it will be revoked.

Advantages of arbitration . . .



. . . to both parties

- ◆ Arbitration is fast. It takes approximately 120 days to resolve a dispute.
- ◆ Arbitration provides an informal setting to resolve a dispute.
- ◆ Arbitrators hearing the cases are experts trained in hearing construction matters.
- ◆ Arbitration is binding.
- ◆ An award may be enforced in court.

. . . to the consumer

- ◆ If the contractor fails to comply with the award, the contractor's license may be suspended or revoked.

. . . to the contractor

- ◆ Under current complaint disclosure laws and policies, a complaint filed against a contractor will not be disclosed to the public unless the contractor fails to comply with the award.
- ◆ A contractor's license will not be suspended or revoked on a complaint allegation referred to arbitration unless the contractor fails to comply with the arbitrator's award.

Points to remember about arbitration



- ◆ Arbitration is mandatory if the complaint is to be resolved by the Contractors State License Board.
- ◆ The complainant must return a properly executed Notice to Arbitrate form to the CSLB within 30 calendar days.
- ◆ The Contractors State License Board will pay for the hearing, the arbitrator, and the services of one board-appointed expert witness per complaint.
- ◆ Arbitration hearings are informal and held at a location near the parties.
- ◆ Only selected cases involving contractors with good records will be referred to arbitration.
- ◆ Once the complainant returns a properly executed Notice to Arbitrate form, the complaint will be referred to arbitration whether or not the contractor returns one.
- ◆ Both parties are responsible for preparing their cases and presenting them at the hearing.
- ◆ If parties want a record of the hearing, they will have to pay for a court reporter or make other arrangements to record the proceedings.
- ◆ If parties want to be represented by an attorney, they will have to hire one at their own expense.
- ◆ If parties need an expert witness to assist in the presentation of their cases, they may hire one at their own expense, or they may use the services of the CSLB-paid expert witness.
- ◆ In most cases, a party will not be able to file an independent civil suit in court regarding the same issues that have been decided through arbitration.
- ◆ Grounds for appealing an arbitration award are very limited.
- ◆ If a contractor files for bankruptcy, the CSLB or the arbitration association must be notified immediately.

Case presentation checklist

The following is a list of items that may be helpful in presenting evidence to the arbitrator at the hearing. This list is not intended to limit you from presenting other evidence as you deem necessary.

Contract

- ☐ Contract, plans and/or specifications, proposals, or any other evidence of an agreement with the other party that tends to prove the services, materials, etc., that were to be provided and for how much. (Note: Documents you have submitted to the CSLB are not forwarded to the arbitration association.)

Payment

- ☐ Checks, receipts, and ledgers that prove what has been paid, what is owed, and what services or materials were provided.

Performance

- ☐ Evidence from an expert witness that prove the services, materials, etc. were or were not provided in accordance with the contract, plans, and specifications or agreement. (If the state has paid for an expert witness, that expert's report will be sent to the arbitration association by the CSLB.)

Financial injury

- ☐ Evidence of the financial injury caused by deficient, defective or incomplete work. Financial injury may be established by presenting correction/completion cost estimates provided by an expert witness or by other contractors.
- ☐ Present the contract, the amount of money you have paid or value of services, materials, etc. you have received or provided.
- ☐ Amount owed on the contract and the amount of money that it will cost you to correct/complete the job, or the amount of money owed to you.



Contractors State License Board

P.O. Box 26000, Sacramento, CA 96826

Addresses and phone numbers for offices of the Contractors State License Board are found in the white pages of the telephone directory under State of California listings.

The CSLB also offers a toll-free telephone line with information about dealing with contractors, contractor license status, as well as phone numbers for district offices of the board.

The board's automated phone response number is 1-800-321-CSLB. For on-line information, see our website at www.cslb.ca.gov

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